

**Kansas Administrative Regulations
Economic Impact Statement
For the Kansas Division of the Budget**

Kansas Department of Health and Environment
Agency

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Agency Contact

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Article 47 -- Mined-Land Conservation and Reclamation (KDHE)
KAR Number(s)

KAR 47-2-75, 47-3-1, 47-3-2, 47-3-42, 47-5-5a, 47-6-1, 47-6-2, 47-6-3, 47-6-4, 47-6-6, 47-6-8, 47-6-9,
47-6-10, 47-6-11, 47-7-2, 47-8-9, 47-9-1, 47-9-4, 47-10-1, 47-11-8, 47-12-4, 47-13-4, 47-14-7, 47-15-1a,
47-16-6, 47-16-9, 47-16-10, 47-16-12 -- amended
47-16-13 -- new

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to:

Division of the Budget
900 SW Jackson, Room 504-N
Topeka, KS 66612

I. Brief description of the proposed rule(s) and regulation(s).

1. A minor change to all the July 1, 2001, regulations adopted by reference, bringing them into compliance with the regulations as they existed on July 1, 2012. All the regulations will be adopted as of the same date.

2. Article 2 was updated to include the definitions of the Applicant Violators System or AVS; Control or controller when used in parts 773, 774, and 778 of this chapter; Knowing or knowingly; Own, owner, or ownership when used in parts 773, 774, and 778 of this chapter; Transfer, assignment, or sale of permit rights; Violation when used in the context of the permit application information or permit eligibility requirements of section 507 and 510 (c) of the Act; Violation, failure, or refusal, for the purpose of parts 724 and 846 of this chapter; Violation notice; and Willful or willfully; all other references to the aforementioned definitions were removed as required by the Office of Surface Mining.

3. Changes in Article 3 bring the regulations dealing with ownership and control into compliance with the 30 CFR as mandated by the federal government, Office of Surface Mining (OSM). These changes in Article 3 include updating it to meet federal regulations as they apply to: Review of permit applications, 30 CFR 773.7; General provisions for review of permit application information and entry of information into AVS, 30 CFR 773.8; Review of applicant and operator information, 30 CFR 773.9; Review of permit history, 30 CFR 773.10; Review of compliance history, 30 CFR 773.11; Permit eligibility determination, 30 CFR 773.12; Unanticipated events or conditions at remining sites, 30 CFR 773.13; Eligibility for provisionally issued permits, 30 CFR 773.14; Written findings for permit application approval, 30 CFR 773.15; Performance bond submittal, 30 CFR 773.16; Permit conditions, 30 CFR 773.17; Initial review and findings requirements for improvidently issued permits, 30 CFR 773.21; Notice requirements for improvidently issued permits, 30 CFR 773.22; Suspension or rescission requirements for improvidently issued permits, 30 CFR 773.23; Who may challenge ownership or control listings and findings, 30 CFR 773.25; How to challenge an ownership or control listing or finding, 30 CFR 773.26; Burden of proof for ownership or control challenges, 30 CFR 773.27;

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Division of the Budget

Written agency decision on challenges to ownership or control listings or findings. 30 CFR 773.28; Certifying and updating existing permit application information. 30 CFR 778.9; providing applicant and operator information. 30 CFR 778.11; Providing permit history information. 30 CFR 778.12; Providing property interest information. 30 CFR 778.13; and Providing violation information. 30 CFR 778.14. Other minor changes made to Article 3 included changing the date of adoption to July 1, 2012, bringing all the regulations into line with the same adoption date.

4. Changes in Article 5 bring the regulations dealing with alternative enforcement actions into compliance with the 30 CFR as mandated by OSM. These changes in Article 5 include updating it to meet federal regulations as they apply to: General provisions. 30 CFR 847.2; Criminal penalties. 30 CFR 847.11; and Civil action for relief. 30 CFR 847.16. Other minor changes made to Article 5 included changing the date of adoption to July 1, 2012, bringing all the regulations into line with the same adoption date.

5. Changes in Article 6 bring the regulations dealing with ownership and control that apply to revision; renewal; transfer, assignment, or sale of permit rights and other actions based on ownership, control and violation information into compliance with the 30 CFR as mandated by OSM. These changes in Article 6 include updating it to meet federal regulations as they apply to: Post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information. 30 CFR 774.11; Post-permit issuance information requirements for permittees. 30 CFR 774.12; and Transfer, assignment, or sale of permit rights. 30 CFR 774.17. Other minor changes made to Article 6 included changing the date of adoption to July 1, 2012, bringing all the regulations into line with the same adoption date.

6. Minor changes made to Article 7, 8, 9, 10, 11, 12, 13, and 14 included changing the date of adoption to July 1, 2012, bringing all the regulations into line with the same adoption date.

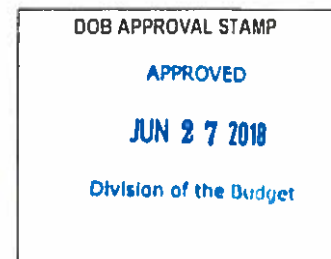
7. Changes in Article 15 bring the regulations into compliance with the 30 CFR as mandated by OSM. These changes in Article 15 include updating it to meet federal regulations as they apply to: Cessation orders. 30 CFR 843.11. Other minor changes made to Article 15 included changing the date of adoption to July 1, 2012, bringing all the regulations into line with the same adoption date.

8. Changes in Article 16 bring the regulations dealing with ownership and control that apply to AML contractor eligibility into compliance with the 30 CFR as mandated by OSM. The change in Article 16 included updating it to meet federal regulations as they apply to: Abandoned mine land contractor eligibility. 30 CFR 874.16. A change to the regulations not mandated by OSM in Article 16 brings the adoption by reference into line with the July 1, 2012 adoption date. This will allow all the regulations to be adopted from the same source and the same date.

9. There were also changes made throughout the regulation set to correct regulatory form and style.

II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. (If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)

The Federal Government established the authority to regulate coal mining and reclaim hazards associated with past coal mining practices in the Surface Mining Control and Reclamation Act of 1977



(SMCRA). With the adoption of SMCRA all the coal mining states in the Union were provided the opportunity to adopt similar regulations and control the reclamation of active mines and abandoned mine land (AML) in their individual states.

As part of Title IV, Section 405 and Title V, Section 503 of SMCRA, the majority of the amendments are mandated by the Federal Government as part of a federally subsidized or assisted program. In a letter to the State from OSM, received on December 21, 2009, and subsequent letters, the State of Kansas was required to update its regulations and bring them into compliance with federal regulations.

As provided for in Title IV, Section 405 of SMCRA, in order for a state to qualify for Title IV AML funds, the state must have an approved Title V, Section 503 program which is an administration and enforcement program for the active coal mines. For a state to maintain an approved Title V program they must remain in compliance with 30 CFR 732.15, Criteria for approval or disapproval of State programs. For program approval in accordance with 30 CFR 732.15, a state must maintain regulations as stringent as the federal regulations. Therefore, for the State of Kansas to keep receiving Federal Title IV AML funds, the regulation changes required by OSM need to be completed to bring state regulations into compliance with federal regulations.

The same approach is taken by all the states with coal mining contiguous to Kansas.

III. Agency analysis specifically addressing following:

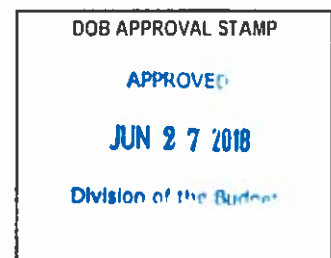
A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The regulation changes should have no net effect either to enhance or restrict activities with the coal mining industry. The major loss of coal production in the state rests in the fact that the coal mined is no longer in demand and most of the easily accessible coal has already been mined. This makes it much costlier to go after the deeper seams of coal.

B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;

Failing to adopt the required regulation changes, the State of Kansas could lose the approved Title V Program which in turn could mean the loss of all their Abandoned Mined Land (AML) funding and half the funding for the Title V Program. This loss of revenues could be more than \$3,000,000 to the state. The persons affected by the loss of this revenue would be the general public.

The effect on the state would be the loss of the AML Program which reclaims hazards to the health, and safety, of the general public created by past coal mining. Past coal mining is defined as any coal mining which occurred prior to 1977 or the inception of the Surface Mining Control and Reclamation Act (SMCRA). The AML Program also contains the Emergency Program. This program is designed to alleviate any hazards which are of an emergency nature and occur in a sudden manner. This would include but is not limited to subsidence under homes or in roadways.



The loss of half the funding to the Title V Program could lead to environmental problems when coal operators fail to reclaim the environment. There could be loss of prime farmland soils and polluted water associated with the failure to do acceptable and timely reclamation on active coal mines. Failure to do satisfactory reclamation could leave hazards, such as those reclaimed by the AMI Program, being left on active coals mine sites.

Since the proposed regulation changes are minor, there will have no net effect on business activities and growth.

C. Businesses that would be directly affected by the proposed rule and regulation;

The business that would be directly affected are the coal mining companies. Failing to adopt the regulations and losing the funding for the AMI Program would affect the construction contractors, engineering firms and vendors of construction goods within the State.

D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

The benefit of adopting the these regulations will be that be the state will continue to receive \$3,000,000 per year to operate the AMI Program and half the funding for the Active Mining Program.

E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

These regulations changes will update the Applicant Violators System (AVS) and should have little impact on the coal companies in the State. The agency did not make any changes that would have increased the cost of production.

F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

To obtain the \$3,000,000 in AMI funds from the federal government, the state must have an active Administration and Enforcement Program. The cost of the Administration and Enforcement Program is split 50/50 between the state and federal government. The state's share of the funds to operate the Active Mining Program are generated by a per ton fee charged to the coal operators for each ton of coal mined in the state and a \$60 per acre fee on each acre of land permitted for coal mining. The \$60 per acre fee is charged at permit submission and then again, every 5 years at permit renewal. The per acre fee is prorated after the initial submission based on the phases of bond releases obtained. The remainder of the Active Mining Program funding is covered by State General Funds.

The cost of operating the Administration and Enforcement Program should remain the same or slightly decrease over the next 6 to 7 years as Phase III bond releases are obtained on the remaining active coal mining permits and the permits in bonds forfeited are reclaimed and released. As the workload decreases,



the need for inspections and staffing will decrease. This may change if a coal company submits a new coal mining permit within that timeframe.

An estimate, expressed as a total dollar figure, of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

\$72,850, annually for as long as the AML program is active

Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?

YES ☐ NO ☒

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

The data used in this statement was generated from the 2018 Federal Grants for both the AML and Active Mining Programs of the KDEE, and from SMCRA. Funding for the AML Program was determined through Section 402 (g)(8) of SMCRA.

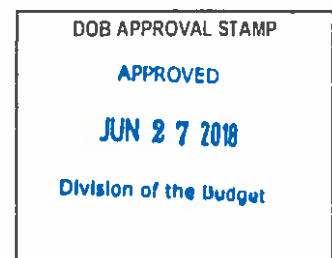
Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

YES ☐ NO ☒

Not applicable -- The costs of the Active Mining Program over two years will be less than \$200,000.

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.**

The regulation changes will have no effect on the cities, counties or school districts within the state. However, when the notice of hearing for these regulations is published in the *Kansas Register*, standard agency procedure will be followed and the three organizations will be contacted electronically with attached copies of the regulations, economic impact statement and published notice of hearing.



H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

The regulation changes will have no net effect on businesses, associations, local governments, state agencies, or institutions and members of the public of the state. There are no less intrusive or less costly methods available for consideration by KDHE to achieve the purposes of the proposed regulation changes.

I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

The existing laws contained within K.A.R. Agency 47 deal with the protection of the environment during active coal mining operations, and reclamation of both active coal mines and hazardous AML sites. The proposed regulation changes will benefit the environment by making the administration and enforcement of the existing laws ensuring environmental compliance more effective. Without the Active Mining Program there would be loss of prime farmland soils and polluted water associated with the failure to do acceptable and timely reclamation on active coal mines. Failure to do satisfactory reclamation would leave hazards, such as those reclaimed by the AML Program, being left on active coals mine sites. The landowner would then become responsible for abating any hazards or cleaning any water polluted by the mining operation.

